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Supreme Court of the United States

October Term, 1964.

No. 324.

LOCAL 1566, INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent.

REPLY BRIEF TO RESPONDENT'S BRIEF IN OPPOSITION.

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IN THE

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The Board, in an effort to distinguish the effect of the illegal lockout upon Local 1291 from that upon the other locals, states that: "On the factual situation before it, the Board could properly limit relief for the consequences of the association's ill-advised defensive measure to those employees who were primarily and directly affected by the association's conduct;" and that the Board "reasonably concluded that in the circumstances of this case the lockout of the longshoremen did not have the necessary and foreseeable consequence of discouraging union activity" by Local 1566, and that, therefore, it was not "inherently discriminatory" as to the latter (Brief, pages 6-7). These statements blindly refuse to recognize the obvious facts in this case.

The undisputed facts, *as found by the Trial Examiner,* demonstrate without doubt that the members of Local 1566 *were* primarily and directly affected by the lockout, and that the Association's illegal conduct *did have* the neces-

sary and foreseeable consequence of discouraging union activity by the members of this local, and *was* inherently discriminatory as to them. The Trial Examiner found that by the very nature of the work performed, *every* action which affected Local 1291 immediately and to the same extent affected Local 1566 (23a). The collective bargaining agreement provides that Local 1566 shore, support, lash, and strap all cargo *as and when*, and to the same extent, that Local 1291 loads the same. During unloading by Local 1291, the reverse procedure by 1566 takes place. Further, Local 1566 must erect grain feeders and cargo shifting boards, and similar devices, in conjunction with loading of certain bulk cargo by Local 1291. The foregoing requires the presence of Local 1566 men at the same time and place as Local 1291 must be present. Without Local 1566, Local 1291 would be immobilized. Any obstructions placed in the path of Local 1291 immediately obstruct Local 1566, and to the same extent.

The work of these locals is so intertwined that, in many aspects they have concurrent jurisdiction. This is specifically recognized in the collective bargaining agreement which provides for concurrent jurisdiction in flooring with dunnage and discharging same, loading ship's stores, and opening and covering hatches (G. C., Ex. 9, pp. 54-55, 68-69). Thus, if the Board felt that "it could properly limit relief . . . to those employees who were primarily and directly affected by the Association's conduct", it was forced by the undisputed facts to conclude that the relief granted to members of Local 1291 *must* be granted to 1566, as the Trial Examiner did conclude.

This obvious interrelation and interdependence of work requires the conclusion that the lockout of Local 1291 necessarily and foreseeably discriminated against Local 1566. This Court has repeatedly emphasized that the employer's illegal intent is found in the foreseeability of the consequences.* The natural foreseeability that refusal of

* *NLRB v. Erie Resistor Corp.*, 341 U. S. 810, 10 L. ed. 2d 308, 314-15 (1963).

work to Local 1291 must discriminate against and injure Local 1566 is a necessary conclusion from the practical, economic, historic and official interrelation and identities of the two locals. Realizing the total interdependence between these two locals the Associations threatened and executed the lockout with the obvious intent that Local 1566, as well as the International, would apply its own pressure on Local 1291 to give in to the Association's illegal demand. As this Court said in the *Erie Resistor* case, the employer's conduct "does speak for itself" (10 L. ed. 2 at 314-15).

The conclusions of the Trial Examiner were wholly required by the facts and the law in this case. The contrary decision by the Court below directly conflicts with the principles repeatedly announced by this Court, and should be reversed.

Respectfully submitted,

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